

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

EDUCATION RIGHTS HOLDER ON
BEHALF OF STUDENT,

v.

COLTON JOINT UNIFIED SCHOOL
DISTRICT COLTON JOINT UNIFIED
SCHOOL DISTRICT; RIALTO UNIFIED
SCHOOL DISTRICT; JURUPA UNIFIED
SCHOOL DISTRICT; POMONA UNIFIED
SCHOOL DISTRICT; AND HACIENDA
LA PUENTE UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015080769

ORDER DENYING WITHOUT
PREJUDICE JOINT MOTION TO
BIFURCATE BY COLTON JOINT
UNIFIED SCHOOL DISTRICT AND
RIALTO UNIFIED SCHOOL DISTRICT

On August 19, 2015, Education Rights Holder on behalf of Student filed with the Office of Administrative Hearings a Request for Due Process Hearing (complaint), against Colton Joint Unified School District, Rialto Unified School District, Jarupa Unified School District, Pomona Unified School District, and Hacienda La Puente Unified School District

On August 27, 2015, Colton and Rialto jointly filed a motion to bifurcate the issue of Student's residency during the period at issue to determine the responsible school district from whether any of the school districts denied him a free appropriate public education.

On September 8, 2015, Student filed an opposition to the motion to bifurcate the issue of Student's residency from whether he was denied a free appropriate public education. No responsive pleadings were received from Jarupa, Pomona and Hacienda La Puente.

APPLICABLE LAW

Although there is no special education law or regulation that addresses bifurcation of issues, OAH generally looks to civil cases and the California Administrative Procedure Act for guidance. Government Code section 11507.3 of the APA of states, in part:

(b) The administrative law judge on the judge's own motion or on motion of a party, in furtherance of convenience or to avoid prejudice or when separate hearings will be conducive to expedition and economy, may order a separate hearing of any issue, including an issue raised in the notice of defense, or of any number of issues.

Code of Civil Procedure section 598 contains a similar provision for civil trials:

The court may, when the convenience of witnesses, the ends of justice, or the economy and efficiency of handling the litigation would be promoted thereby, on motion of a party, after notice and hearing, make an order, no later than the close of pretrial conference in cases in which such pretrial conference is to be held, or, in other cases, no later than 30 days before the trial date, that the trial of any issue or any part thereof shall precede the trial of any other issue....

OAH also has the obligation to move cases to hearing expeditiously. A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless there is a 30-day statutory resolution period or an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f).)

DISCUSSION

In the complaint, Student, a foster youth, contends that the five districts have overlapping responsibility for providing him a free appropriate public education during the 2013-2014 school year.

In the motion for bifurcation, Colton and Rialto contend that Student's residency is a threshold issue which would result in judicial economy. The two also contend that there are no common issues of law and fact as to Student's claims against each of the five districts named.

Student asserts that residency is not a threshold issue in that Student was a foster youth pursuant to Education Code Section 48853.5 subdivision (a)(8). Student also contends that the five districts have overlapping responsibility for providing Student with a free appropriate public education.

The appropriate time to raise the request is at the prehearing conference. At that time, the assigned ALJ can consider the request and if the request to bifurcate is granted, discuss with the parties any scheduling issues. (See, *Student v. Fortuna Unified School District, Kelseyville Unified School District, and Konocti Unified School District* (August 25, 2014, OAH Case number 2014080602) Accordingly the motion for bifurcation by Colton

and Rialto is denied without prejudice to permit the parties to discuss the bifurcation request with the ALJ assigned to hear this matter at the prehearing conference.

ORDER

The motion to bifurcate by Colton and Rialto is denied without prejudice.

DATE: September 9, 2015

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings